

NEW JERSEY BROWNFIELD REDEVELOPMENT TASK FORCE

**POLICY & LEGISLATIVE COMMITTEE**

MINUTES OF MEETING HELD TUESDAY, MARCH 28, 2006  
10:00 P.M. – 12:00 P.M.

DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
TRENTON, NEW JERSEY  
OFFICE OF SMART GROWTH LIBRARY - 7TH FLOOR

**Committee Members Present—**

Leah Healey - Public Member – Committee Chair  
Colleen Kokas –Site Remediation/Waste Management, NJ Department of Environmental Protection  
Frances E. Hoffman – Office of Smart Growth, NJ Department of Community Affairs  
Lauri Sheppard – NJ Redevelopment Authority (teleconference)  
James D. Simmons – NJ Commerce, Economic Growth and Tourism  
Erin Simone – NJ Department of Agriculture  
Rose Smith – NJ Economic Development Authority (teleconference)

**Committee Members Not Present—**

Sally Dudley, Public Member – Environmental  
Dennis Toff, Public Member – Task Force Chairperson  
William Mullen – Public Member – Labor and Trade

**Other Attendees—**

Tim Consella – Birdsall Engineering, NJ Chapter National Brownfields Association Legislative Committee  
Barry Frasco – NJ Department of Environmental Protection, SRWM, DRMR  
Tom McKee – ICO Jersey City  
Kelley McNicholas – Sierra Club, NJ  
Dan Reynolds – Council to the Task Force  
Liz Semple – NJ Department of Environmental Protection  
Eileen Swan – NJ Department of Community Affairs  
Cynthia Weiser – Office of Smart Growth, NJ Department of Community Affairs  
Adam Zelner – NJ Department of Environmental Protection

**CALL TO ORDER & WELCOME—**

Ms Healey welcomed the Committee and called the meeting to order at 10:08 a.m.

**I. PUBLIC COMMENTS—**None.

**II. ROLL CALL—**Roll was called and a quorum was present.

**III. APPROVAL OF MINUTES—**Minutes of the January 24 meeting were not available at this time. Minutes of the amended 11/29/05 meeting and the 10/04/05 meeting will be circulated to the members and brought before the committee for a vote at the next meeting.

**IV. PRESENTATION—Barry Frasco, DEP Groundwater Rules Impact on Brownfields**

Mr. Frasco gave details on a case within the Site Remediation Program in Newark that was undergoing a remediation. The Department of Environmental Protection established a clean-up level at 1ppb in the groundwater for which the facility was responsible. The company argued that that was inappropriate and filed suit. The court ruled in favor of DEP, declaring that the DEP's groundwater and surface water quality standards would function as remediation standards.

The following points were raised during the discussion following the presentation.

- NJ is a 'buyer beware' environment for those purchasing remediated property, underscoring the need to carefully conduct due diligence prior to acquisition.
- There is not enough public money to achieve the clean-up standards, in conjunction with responsible parties. Individuals, communities are at risk from these properties if left unattended, and the properties need to be moved forward.
- There is severe understaffing for DEP monitoring functions, or even for reviewing controls and there is virtually no policing. If we could report to the public that we are doing something about this problem, it may help ease their concerns about environmental protection.
- Monitoring controls need to be in place to create a reasonable standard of comfort that the public will accept. The Task Force should look at the resources that are in place and redirect the focus to provide the public with the means to evaluate the quality of work.
- It was suggested that a DEP representative explain how the cap monitoring program is applied at the next Policy and Legislative meeting. And at a subsequent meeting, have a presentation from the risk communication section at DEP about the issue of cap effectiveness and monitoring. It was suggested that public health interest groups be invited to the discussion.
- It was suggested that the Task Force develop a set of "Best Practices" pertaining to certain public "hot button" issues, acknowledging that it does not have the authority to force state agencies to adopt such practices.

**V. COMMITTEE BUSINESS:**o **Legislation:**

- Bill S1473 – a bill introduced to correct wording errors in the recently passed S277 (amendments to the HDSRF program) that inadvertently reduced the level of funding for environmental assessments for municipal grants from 100% to 75%. This bill would restore the grant level to that originally intended. The Task Force recommended support of Bill S1473.
- A number of bills pertaining to eminent domain are being presented in this session of the Legislature. The Task Force should review them and provide comment.
- **Bill S1549** This bill, sponsored by Senator Doria, authorizes grants to independent colleges for remediation of property non-owned by the college.
- **Law Expediting State Permits** The Task Force questioned the status of this bill.

o **HDSRF Program** – The application review process and the application of the new amendments continue to be issues of concern to the Task Force. the application process and how the new entities are eligible. It was suggested that additional meetings to directly raise these issues with DEP are needed. The meetings would involve the Task Force/OSG, EDA, Commerce, and members of the private sector such as those that spoke out at the Task Force meeting in Bayonne. The issues of concern include:

- The process by which the applications for the HDSRF program are reviewed appears to be unnecessarily arduous and time consuming, generating an extensive backlog of applications and extending the anticipated review time for up to one year, except for cases that are deemed priority.

- Current interpretation of the ability to use powers of eminent domain in areas designated in need of redevelopment by municipalities – this ability is prohibiting municipalities from being eligible for these grants in areas deemed especially critical for redevelopment. Bayonne was recently denied its HDSRF application because the HDSRF program had considered the properties in question that were in an area designated in need of redevelopment not a circumstance in which the property would be voluntarily acquired. This determination was made regardless of whether the municipality actually using powers of eminent domain. It is not the actual use of the power of eminent domain but the potential for using the powers of eminent domain that is being interpreted in a way that prevents eligibility for funding. This decision was reversed, but this may not be the case for other situations

It was felt that Legislature was not clear on the full implications of how the wording of the new amendments might impact redevelopment in general in a negative way. The Task Force agreed that it may need to go back to the legislators who were involved with this issue from the beginning.

- **ACO / MOA Oversight**: The last interagency discussion of this issue was held at DEP during the latter part of a meeting convened to raise and resolve problems with the processing of HDSRF applications. It was felt by the then Assistant Commissioner, Joseph Seebode, that the issue should be investigated more thoroughly and resolved. The question arose as to whether a Legislative fix or a policy change is called for to determine if the purchaser has to be assigned to the ACO, put funds in escrow, and submit to the strictures of the ACO, or be a candidate for an MOA. The parameters need to be more clearly defined. There was then discussion on whether or not a new purchaser's MOA can supersede the previous/current owner's ACO, but there was no resolution to this issue.

#### **VI. REPORTS FROM COMMITTEE MEMBERS—**

- Site Remediation/Waste Management Program/DEP: A policy/position paper on the use of Administrative Consent Orders (ACOs) and Memoranda Of Agreement (MOAs) was drafted for consideration by the Commissioner. It is anticipated that the final version will address the concerns that the Task Force has raised.
  - It was announced that Commissioner Lisa Jackson named Irene Kropp as the new Assistant Commissioner for Site Remediation and Waste Management. Ms Kropp has a background in Geology and a long history in site remediation, enforcement, DEP's data management system and site remediation's office of management.
  - Members were reminded about the High Performance Redevelopment Conference on June 7, sponsored by the League of Municipalities and the US Green Building Council. The conference will focus on sustainable development and green buildings. DEP is hosting a brownfields to greenfields workshop on July 28. Funding for the conference will come from the Coastal Zone Management Program.
  - The Site Remediation/Waste Management Program issued over 4,000 No Further Action letters last year, the majority of which were home owner transactions.
- Office of Smart Growth/DCA:
  - \$285,000 State appropriation (A1633/S2116) The Commissioner is proposing forwarding language to the bill to extend the use of funds in the FY 2006-7. As it stands currently, the funds cannot be used beyond June 30, 2006. The Commissioner is also reviewing the proposed uses for the appropriation.

- The Task Force recommended that a resolution supporting the extension of the time frame for the use of the funds be sent to the sponsors of the bill. The Deputy Attorney General of the Task Force recommended that the Task Force, via teleconference, vote on wording that he will provide based on the discussions.
- BRIT meeting for Non-profits – A BRIT meeting will be held on April 20 at HMFA for non-profit organizations that are already involved or who are interested in becoming involved in brownfields redevelopment. A case study - Lincoln Park project in Newark Central District – will be presented. It will include a question and answer segment following the presentation. The Task Force requested that information on this meeting be circulated.
- Data Day 2006, War Memorial, George Washington Ballroom, March 31 – This event will be comprised of three panels, the first with the academic community and municipalities that are involved in the C-MAP Program. The second with the private sector and municipal and county's perspective on how the SiteMart is actually used. This discussion will highlight strengths, glitches, and suggestions on how to improve the SiteMart. In addition, a C-MAP Certificate of Appreciation will be awarded to students, faculty and municipalities who participated in the program this past year. This will be followed by a high-level panel, on which the DCA Commissioner and others heads of agencies, e.g., EDA, NJRA, DOT, etc. The sponsors of the legislation for the brownfields inventory will be invited to the event.

**VII. COMMITTEE MEMBERS COMMENTS—None**

**VIII. ADJOURNMENT—The meeting was adjourned at 11:53 p.m.**

Respectfully submitted,



Frances E. Hoffman  
Secretary, New Jersey Brownfields Redevelopment Task Force

Prepared by Cynthia Weiser  
04/27/06